



BILLING CODE: 8025-01

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245-AG43

Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting

AGENCY: U.S. Small Business Administration

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the small business size standards for 11 industries in North American Industry Classification System (NAICS) Sector 11, Agriculture, Forestry, Fishing and Hunting, and retaining the current standards for five industries and two exceptions to NAICS 115310. As part of its ongoing comprehensive size standards review, SBA evaluated 16 industries and two exceptions in NAICS Sector 11 to determine whether the existing size standards should be retained or revised. SBA did not review size standards for 46 industries in NAICS Sector 11 that are currently set by statute at \$750,000 in average annual receipts. SBA also did not review the 500-employee based size standard for NAICS 113310, Logging, but will review it in the near future with other employee based size standards.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Introduction

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size – average annual receipts and number of employees. Financial assets, electric output, and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and the Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative net worth and net income based size standards. At the start of the current comprehensive size standards review, there were 41 different size levels, covering 1,141 NAICS industries and 18 sub-industry activities (i.e., “exceptions” in SBA's table of size standards). Of these, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures. Presently, there are a total of 1,031 size standards, 516 of which are based on average annual receipts, 499 on number of employees, 10 on megawatt hours, and six on average assets.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size

standards. The latest inflation adjustment to size standards was published in the Federal Register on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether they are supportable by current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is considering groups of related industries on a Sector by Sector basis.

As part of its comprehensive size standards review, SBA evaluated 16 industries and two sub-industries (“exceptions”) in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, to determine whether the existing size standards should be retained or revised. SBA did not review size standards for 46 industries in NAICS Sector 11 that are currently set by statute at \$750,000 in average annual receipts. SBA also did not review the 500-

employee based size standard for NAICS 113310, Logging, but will review it in the near future with other employee based size standards.

On September 11, 2012, SBA published a proposed rule in the Federal Register (77 FR 55755) seeking public comment on its proposal to increase the size standards for 11 industries in that Sector and retain the size standards for five remaining industries and two sub-industries (“exceptions”). The comment period ended on November 13, 2012.

In conjunction with the current comprehensive size standards review, SBA developed a “Size Standards Methodology” for establishing, reviewing, and modifying size standards, where necessary. SBA published the document on its website at www.sba.gov/size for public review and comment and also included it as a supporting document in the electronic docket of the September 11, 2012 proposed rule at www.regulations.gov.

When evaluating an industry’s size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition, and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in NAICS Sector 11, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2007 County Business Patterns and the 2007 Census of Agriculture from the National Agricultural Statistics Service (NASS). NAICS Sector 11 is not covered by the Census Bureau’s Economic Census. (For a more detailed discussion, please see 77 FR 55755). SBA also evaluated the level and small business share of Federal contract dollars in each of those industries using the data from the U.S. General Service Administration’s Federal

Procurement Data System – Next Generation (FPDS-NG) for fiscal years 2008 to 2010. To evaluate the impact of changes to size standards on its loan programs, SBA examined data on its own guaranteed loan programs for fiscal years 2008 to 2010.

SBA’s “Size Standards Methodology” provides a detailed description of analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its “Size Standards Methodology” to review, and modify where necessary, the existing size standards for industries in NAICS Sector 11. SBA sought comments from the public on a number of issues about its “Size Standards Methodology,” such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA’s approach to establishing small business size standards makes sense in the current economic environment; whether SBA’s application of anchor size standards is appropriate in the current economy; whether there are gaps in SBA’s methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

In the proposed rule, SBA sought comments on its proposal to increase the size standards for 11 industries and retain the existing size standards for the remaining five industries and two sub-industries that were examined in NAICS Sector 11. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed levels for receipts based size standards are appropriate and whether it should adopt common size standards for certain Industry Groups and Subsectors in NAICS Sector 11.

SBA's analyses supported lower size standards for four industries and two sub-industries in NAICS Sector 11. However, as explained in the proposed rule, SBA did not propose to lower them in view of the current economic environment because lowering size standards would reduce the number of firms eligible to participate in Federal small business assistance programs, which could adversely affect those firms that would no longer qualify as small, and would be counter to what the Federal government and SBA are doing to help small businesses and create jobs. Therefore, SBA proposed to retain the current size standards for those industries and sub-industries and requested comments on whether the Agency should lower them based on its analyses. In addition, SBA requested comments on the elimination of the Forest Fire Suppression and Fuel Management Services as "exceptions" to NAICS 115310, and the application of the same size standard for them as for the rest of the NAICS 115310.

Summary of Comments

SBA received 13 comments from 12 respondents to the proposed rule. Ten of the respondents offered support for the Agency's efforts to update size standards in NAICS Sector 11, and two of the respondents commented about issues not related to the proposed rule. More specifically, one commenter offered support for all SBA's proposed changes for evaluated industries under NAICS Sector 11; two supported the increase in size standards for NAICS 115111, Cotton Ginning, from \$7 million to \$10 million; and five offered support to retain the two sub-industries, Forest Fire Suppression and Fuels Management Services, as "exceptions under NAICS 115310, Support Activities for Forestry; they also supported retaining the current \$17.5 million size standard for each of them even if the SBA's analyses supported lowering it. Additionally, one commenter, an association of

dealers and manufacturers of agricultural equipment, suggested examining their industries as part of the evaluation of size standards in NAICS Sector 11. Finally, a hunter expressed concern with the indirect impact any proposed changes to size standards may have on deer hunting regulations. All comments to the proposed rule for NAICS Sector 11 are available for public review at <http://www.regulations.gov>, using RIN 3245-AG30 or docket number SBA-2012-0003. These comments are summarized in more detail below.

General Support to the Proposed Rule

One commenter generally supported the size standards review and rulemaking process and changes to size standards being considered by SBA. Specifically, the commenter supported the SBA's proposal to simplify size standards by basing them on eight fixed levels, because that will provide regulatory certainty to small business concerns under NAICS Sector 11. Second, he supported SBA's proposal to retain the current size standards for the four industries and two sub-industries under NAICS Sector 11 for which SBA's analysis could support lowering them. Finally, the commenter expressed unqualified support for SBA's analysis in this proposed rulemaking in particular and support for SBA's continued efforts to assist small businesses in general.

NAICS 115111, Cotton Ginning

Two commenters representing different trade associations of cotton ginners fully supported SBA's proposal to increase the size standard for NAICS 115111, Cotton Ginning from \$7 million in average annual receipts to \$10 million. Both recognized that the increased size standard accounts for changes in the structure of the industry, such as changes in the marketplace, increased operation costs, and technological changes.

NAICS 115310 – Forest Fire Suppression and Fuels Management Services, Exceptions

Five commenters fully supported the SBA’s proposal to retain the Forest Fire Suppression and Fuels Management Services as “exceptions” under NAICS 115310, Support Activities for Forestry, and their corresponding current size standard of \$17.5 million.

Three commenters were small businesses that provide services in the forest industry. These commenters advocated for retention of the \$17.5 million size standard for the two sub-industries (i.e., exceptions) under NAICS 115310. One of the three agreed with SBA’s proposal to keep the \$17.5 million size standard because it allows for small businesses to average out good years and bad years in revenues earned in this support service.

A logging organization, whose membership includes wildland firefighting organizations, also commented in support of SBA’s proposal. The association added that most of its members are small and family owned operations who offered their support for keeping the current \$17.5 million size standard.

SBA agrees with these commenters. SBA considers that the numerical results of these two sub-industries in the proposed rule reflected the decreases in numbers of fires and consequent reductions in payments to contractors during fiscal years 2008-2010 as compared to previous years. Given the inherent uncertainty of occurrences of forest fires, SBA believes that contracting officers need flexibility to hire small businesses, especially in the worst case scenario. In a very active fire season, size of payments can easily support the \$17.5 million size standard for Fire Suppression Services.

Two associations representing several companies that primarily deal with fuels management and fire suppression support services to the forest industry also urged SBA to

retain its current \$17.7 million size standard for these support services. One of these organizations included a large volume of contract documents and some statistical information to support its advocacy for its members.

Therefore, SBA is retaining Forest Fire Suppression and Fuels Management Services as exceptions under NAICS 115310 and their current \$17.5 million size standard.

Other Issues Not Related to the Proposed Rule for NAICS Sector 11

One commenter, representing a national association of farm and outdoor equipment dealers and manufacturers, expressed concern with the impact the proposed size standards revisions might have on its members. The members of the association represent two industries: NAICS 333111, Farm Machinery and Equipment Manufacturing, and NAICS 423820, Farm and Garden Machinery and Equipment Merchant Wholesalers. The commenter suggested that SBA should consider examining the size standards for these industries as part of the review of size standards for NAICS Sector 11. The commenter recommended different receipts based size standards for various agricultural equipment and machinery dealerships. SBA does not accept the commenter's recommendations in this final rule for three reasons. First, there is a single 100-employee size standard for all industries in NAICS Sector 42, Wholesale Trade, except for purposes of Federal government procurement when the 500-employee size standard applies under the non-manufacturer rule (see 13 CFR 121.402(b)). Similarly, for NAICS 333111, the size standard is 500 employees. Second, the association recommended receipts based size standards for both NAICS industries (NAICS 333111 and NAICS 423820). However, SBA uses the number of employees as the basis of size standards for all industries in the manufacturing and wholesale trade sectors (see SBA's "Size Standards Methodology,"

referred above and in the proposed rule). Third, these industries are not part of NAICS Sector 11. The first industry (NAICS 333111) is part of NAICS sector 31-33, Manufacturing, and the second industry (NAICS 423820) is part of NAICS 42, Wholesale Trade. Detailed information about definitions of industries under NAICS can be found at <http://www.census.gov/eos/www/naics/>. As part of its ongoing comprehensive size standards review, SBA will evaluate these industries, along with other other industries in those sectors, and publish a proposed rule for comments in the near future.

Finally, a commenter that identified herself as a hunter expressed concern over the possible increase in cost to obtain deer hunting permits because of the increases of small business size standards in NAICS Sector 11. SBA cannot respond to this comment because the Agency does not establish, modify, or clarify deer hunting regulations. SBA's size standards only applies to Federal contracting and other SBA's programs and services targeted to small businesses, including guaranteed loans.

Conclusion:

Based on the analyses of relevant industry and program data and there being no public comments against the proposed rule, SBA has decided to increase the small business size standards for the 11 industries, as proposed. These industries and their revised size standards are shown in Table 1, Summary of Revised Size Standards in NAICS Sector 11, below

Table 1
Summary of Revised Size Standards in NAICS Sector 11

NAICS code	NAICS industry title	Current size standard (\$ million)	Revised size standard (\$ million)
112112	Cattle Feedlots	\$2.0	\$7.0

112310	Chicken Egg Production	\$12.5	\$14.0
113110	Timber Tract Operations	\$7.0	\$10.0
113210	Forest Nurseries and Gathering of Forest Products	\$7.0	\$10.0
114111	Finfish Fishing	\$4.0	\$19.0
114112	Shellfish Fishing	\$4.0	\$5.0
114119	Other Marine Fishing	\$4.0	\$7.0
114210	Hunting and Trapping	\$4.0	\$5.0
115111	Cotton Ginning	\$7.0	\$10.0
115114	Postharvest Crop Activities (Except Cotton Ginning)	\$7.0	\$25.5
115115	Farm Labor Contractors and Crew Leaders	\$7.0	\$14.0

For the reasons as stated above in this rule and in the proposed rule, SBA is retaining the current size standards for the four industries and two sub-industries for which analytical results suggested the Agency could lower their size standards. Those six size standards are the following: NAICS 115112, Soil Preparation, Planting, and Cultivation; NAICS 115116, Farm Management Services; NAICS 115210, Support Activities for Animal Production; NAICS 115310, Support Activities for Forestry; and the two exceptions to NAICS 115310, namely, Forest Fire Protection and Fuels Management Services. This is consistent with SBA's recent final rules on NAICS Sector 44-45, Retail Trade (75 FR 61597 (October 6, 2010)); NAICS Sector 72, Accommodation and Food Services (75 FR 61604 (October 6, 2010)); NAICS Sector 81, Other Services (75 FR 61591 (October 6, 2010)); NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)); NAICS Sector 48-49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)); NAICS Sector 51, Information (77 FR 72702 (December 6, 2012)); NAICS Sector 53, Real Estate and Rental and Leasing (77 FR 88747 (September 24, 2012)); NAICS Sector 56, Administrative and Support, Waste Management

and Remediation Services (77 FR 72691 (December 6, 2012)); NAICS 61, Educational Services (77 FR 58739 (September 24, 2012)); and NAICS Sector 62, Health Care and Social Assistance (77 FR 58755 (September 24, 2012)). In each of those final rules, SBA retained the existing size standards for those that it could have reduced. SBA is also retaining the existing size standard for one industry in NAICS Sector 11 for which the results supported it at the current level, namely, NAICS 115113, Crop Harvesting, Primarily by Machine.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)
Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a “significant regulatory action” for purposes of Executive Order 12866. To help explain the need of this rule and the rule’s potential benefits and costs, SBA is providing below a Cost Benefit Analysis. This is also not a “major rule” under the Congressional Review Act (5 U.S.C. 801).

Cost Benefit Analysis

1. Is there a need for the regulatory action?

The revised small business size standards for 11 industries in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, reflect the changes in economic characteristics of small businesses and the Federal procurement market. SBA’s mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs, SBA establishes distinct definitions to determine which businesses are deemed small. The Small

Business Act delegates to SBA's Administrator the responsibility for establishing small business size definitions (15 U.S.C. 632(a)). The Act also requires that small business size definitions vary to reflect industry differences. The Jobs Act requires the Administrator to review at least one-third of all size standards within each 18-month period from the date of its enactment, and review all size standards at least every five years thereafter. The supplementary information sections of the September 11, 2012 (77 FR 55755) proposed rule and this final rule explained the SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement programs reserved for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), economically disadvantaged women-owned small businesses (EDWOSB), and service-disabled veteran-owned small businesses (SDVOSB). These programs assist small businesses to become more knowledgeable, stable, and competitive. Other Federal agencies may also use SBA's size standards for a variety of regulatory and program purposes. In the 11 industries in NAICS Sector 11 for which SBA has increased size standards, SBA estimates that more than 7,800 additional firms, not small under the current size standards, will obtain small business status and become eligible for these programs. That is about 17 percent of the total number of total firms that are classified as

small under the current standards in all industries in NAICS Sector 11 that are covered by this final rule. SBA estimates this will increase the small business share of total industry receipts in those industries from about 78.4 percent under the current size standards to 79.1 percent under the revised size standards.

Three groups will benefit from the revised size standards in NAICS Sector 11 in the following ways: (1) some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain Federal contracts totaling \$7 million to \$12 million annually under SBA's small business, 8(a), HUBZone, WOSB, EDWOSB and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the data for fiscal years 2008 to 2010, SBA estimates about 32 additional loans totaling about \$7 million could be made to additional firms that could become small under the revised standards. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the

Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs for those applicants that do not meet the size standards for their industries. That is, under the Jobs Act, if a firm applies for a 7(a) or 504 loan but does not meet the size standard for its industry, it might still qualify if, including its affiliates, it has a tangible net worth that does not exceed \$15 million and also has average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that do not exceed \$5 million. Thus, SBA finds it difficult to quantify the actual impact of the revised size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of one or more disasters, SBA cannot make a meaningful estimate of this impact.

To the extent that those 7,800 newly defined additional small firms under the revised size standards become active in Federal procurement programs, the revisions to size standards may entail some additional administrative costs to the Federal Government associated with there being more bidders for Federal small business procurement opportunities. In addition, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the System for Award Management (SAM) database, more firms seeking certification for the 8(a) or HUBZone Programs and more firms qualifying for WOSB, EDWOSB and SDVOSB status. Among those newly defined businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. However, SBA believes these added administrative costs are likely to be minimal because mechanisms are already in place to handle these requirements.

Additionally, Federal government contracts may have higher costs under the higher revised size standards. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when more full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, by law, procurements may be set aside for small businesses or reserved for the small business, 8(a), HUBZone, WOSB, EDWOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open bidding opportunities. Similarly, some currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by more Federal procurements being set aside for all small businesses. The number

of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and small businesses under the existing size standards. SBA cannot estimate with precision the potential distributional impacts of these transfers.

The revisions to the existing size standards in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis.

In an effort to engage interested parties in this regulatory action, SBA presented its methodology (discussed above under Supplementary Information in the proposed rule and this final rule) to various industry associations and trade groups. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. The presentation included information on the latest status of the comprehensive size standards review and how

interested parties can provide SBA with input and feedback on the size standards review. Moreover, SBA presented the same information to Department of Defense (DoD) contracting personnel at their annual training session. It included updates on what size standards rules SBA was currently reviewing and plans to review in the future. This is important because DoD contracting provides the greatest opportunities for and awards to small businesses.

Furthermore, when SBA issued the proposed rule, it notified individuals, government procurement personnel, and companies that had in recent years exhibited an interest by letter, email, or phone, in size standards for NAICS Sector 11 so they could comment.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing the proposed rule and this final rule for NAICS Sector 11.

The review of size standards in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in

response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data.

Accordingly, in 2007, SBA began a comprehensive size standards review to ensure that they are supportable, and to revise them, where necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no Federalism implications warranting preparation of a Federalism assessment.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting. As described above, this final rule may affect small entities seeking Federal contracts, SBA's 7(a), 504 and economic injury disaster loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (RFA) of this final rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What are the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions and updated industry definitions have changed the structure of many industries in NAICS Sector 11. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data

available, SBA believes that the revised size standards in this final rule more appropriately reflect the size of businesses in those industries that need Federal assistance. Additionally, the Jobs Act also requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

2. What are SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that more than 7,800 additional firms will become small because of increases in size standards in 11 industries in NAICS Sector 11. That represents 17 percent of total firms that are small under current size standards in all industries covered by this final rule. This will result in an increase in the small business share of total industry receipts in those industries from 78.4 percent under the current size standard to 79.1 percent under the revised size standards. The revised size standards will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number

of other programs requires that entities register in the SAM database and certify at least once annually that they are small. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. Revising size standards alters the access to Federal programs that assist small businesses, but they neither impose a regulatory burden nor regulate nor control business behavior.

4. What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the Federal Register a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to establish different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the existing system of numerical size standards. The possible alternative size standards considered for the individual industries within NAICS Sector 11 are discussed in the supplementary information to the proposed rule and this final rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs – business, Individuals with disabilities, Loan programs – business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121 – SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. In § 121.201, in the table, revise the entries for “112112”, “112310”, “113110”, “113210”, “114111”, “114112”, “114119”, “114210”, “115111”, “115114”, and “115115” to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry

Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	* * * * *		
112112	Cattle Feedlots	\$7.0	
	* * * * *		
112310	Chicken Egg Production	\$14.0	
	* * * * *		
113110	Timber Tract Operations	\$10.0	
113210	Forest Nurseries and Gathering of Forest Products	\$10.0	
	* * * * *		
114111	Finfish Fishing	\$19.0	
114112	Shellfish Fishing	\$5.0	
114119	Other Marine Fishing	\$7.0	
114210	Hunting and Trapping	\$5.0	
	* * * * *		
115111	Cotton Ginning	\$10.0	
	* * * * *		
115114	Postharvest Crop Activities (except Cotton Ginning)	\$25.5	
115115	Farm Labor Contractors and Crew Leaders	\$14.0	
	* * * * *		

Dated: June 13, 2013

Karen G. Mills,
Administrator.

[FR Doc. 2013-14711 Filed 06/19/2013 at 8:45 am; Publication Date: 06/20/2013]